

APPEAL NO. 040439  
FILED APRIL 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 28, 2004. The hearing officer determined that the appellant/cross-respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, third, fourth, fifth, and sixth quarters, and that the claimant is not precluded from payment of SIBs because some of his applications for SIBs were not timely filed. The claimant appealed the hearing officer's determinations that he is not entitled to SIBs for the disputed quarters. The claimant asserts that the hearing officer erred in determining that the claimant failed to provide a narrative report from a doctor, which specifically explains how the compensable injury causes a total inability to work. The respondent/cross-appellant (self-insured) responded, urging affirmance of the nonentitlement determinations. The self-insured appealed, asserting that the hearing officer erred in determining: (1) that the claimant is not precluded from payment of SIBs because of the untimely filing of some of his applications; (2) that the claimant was unemployed during the relevant time period as a direct result of his compensable injury; and (3) that no other credible record showed that the claimant had an ability to work. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that he received an impairment rating of 15% or more; that he did not commute his impairment income benefits; and that the relevant qualifying periods ran from March 6, 2002, through September 2, 2003. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by showing that he had a total inability to work during the relevant qualifying periods. Rule 130.102(b)(1) provides that to be eligible for SIBs, an injured employee's reduced earnings during the relevant qualifying periods must be a direct result of the impairment from the compensable injury. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

Whether there was direct result, a sufficient narrative report, or other records showing some ability to work were factual questions for the hearing officer to resolve. Conflicting evidence was presented to the hearing officer on these issues. The hearing

officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer determined that the claimant's unemployment during the relevant qualifying periods was a direct result of his impairment from the compensable injury; that the medical report submitted by the carrier showing some ability to work was not credible because the doctor based his opinion on incomplete medical records; and that the claimant failed to provide a narrative report which sufficiently explained how the compensable injury caused a total inability to work. Nothing in our review of the record reveals that the hearing officer's determinations in these regards are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the hearing officer's good faith and direct result determinations, or the determination that the claimant is not entitled to SIBs for the disputed quarters, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Based upon our affirmance of the hearing officer's determination that the claimant is not entitled to SIBs for the first, second, third, fourth, fifth, and sixth quarters, we do not reach the self-insured's appeal regarding the claimant's preclusion from payment of SIBs due to untimely filing of some of the applications. This is so because even if error were found, it would not change the outcome in that the claimant has already been determined not be entitled to SIBs for the disputed quarters.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**UNITED STATES CORPORATION COMPANY  
800 BRAZOS STREET  
AUSTIN, TEXAS 78701.**

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge